Ontario Civilian Police Commission 2011 Annual Report

Providing oversight of police services and police services boards since 1962.

Ontario Civilian Police Commission

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Ontario

The Honourable Madeleine Meilleur
Minister of Community Safety and Correctional Services
18th Floor, 25 Grosvenor Street
Toronto, Ontario
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Dear Minister:

Pursuant to the Memorandum of Understanding, I am pleased to forward the Annual Report of the Ontario Civilian Police Commission for the calendar year ending December 31st, 2011.

Yours truly,

David C. Gavsie, Chair

Chair's Message

I am pleased to report on the Commission's activities during the last calendar year.

First, I would like to acknowledge the excellent development and operation of the Commission under the 17 year leadership of Murray Chitra as Chair. Thank you Murray. Mr. Chitra retired as Chair in April 2011 and all of us at the Commission wish him the very best in his future endeavours.

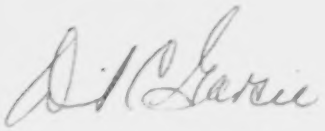
In Ontario, police services and police services boards are ultimately accountable to the public through the Commission. Since the agency's creation nearly 50 years ago, the Commission has released several landmark decisions related to police discipline, employment status, budgets and restructuring as well as investigative and inquiry reports into the conduct of police services and police services board members. Full texts of all of our decisions are available on our website at www.ocpc.ca

Over the past calendar year, the Commission received 10 requests from across Ontario to initiate investigations and held three hearings resulting from these investigations. The Commission rendered 12 decisions with respect to disciplinary appeals and approved 47 First Nations Constable appointments in 2011. In addition, it received 45 requests to review decisions made by police services with regards to public complaints about police officer conduct as well as police policies and services under the previous version of the *Police Services Act*.

Every year, Commission staff engage police officers, civilian staff of police services, and police services boards in discussions regarding their roles in police governance and civilian oversight. As Chair, I have participated in several annual conferences while meeting with stakeholders such as the Police Association of Ontario, the Ontario Association of Chiefs of Police, and the Ontario Association of Police Service Boards to ensure understanding of the Commission's mandate. Together with civilian oversight bodies including the Special Investigations Unit (SIU), the Ontario Independent Police Review Director (OIPRD), and police services boards across Ontario, the Commission respects the mandate and work that all civilian oversight bodies do daily to enforce their mandate under the legislation for the betterment of the policing industry and Ontarians.

I would like to reaffirm the Commission's commitment to serving Ontarians, as demonstrated through five decades of responsive and dedicated public service, as we work to ensure the proactive oversight of police services and police services boards across Ontario.

Yours truly,



David C. Gavsie, Chair

Mission Statement

The Ontario Civilian Police Commission (the "Commission") is an independent oversight agency committed to serving the public by ensuring that adequate and effective policing services are provided to the community in a fair and accountable manner.

Mandate

The Commission's legislative authority is set out in the *Police Services Act*, R.S.O. 1990, c. P.15, as amended, (the *"Act"*) and the *Interprovincial Policing Act*, R.S.O. 2009, c. 30.

Commission Values

Fairness – The provision of service and performance of statutory functions in an impartial, lawful, unbiased and just manner.

Accessibility – The ability to provide information and services that are simple and easy to use.

Timeliness – The performance of tasks within established time frames based on reasonable expectations.

Quality and Consistency – The production of accurate, relevant, dependable, understandable and predictable information and results, with no errors in law or fact.

Transparency – The use of policies and procedures that are clear and understandable to everyone involved.

Expertise – The possession and use of the skill, knowledge and technical competence required to discharge all statutory responsibilities and maintain public confidence.

Optimum Cost – The provision of services at a cost that is based on best practices and is cost effective for everyone involved.

Courtesy – The demonstration of respect to everyone who works in and/or comes into contact with the agency.

Role of the Commission

Mandate

The Commission is an independent oversight agency at arm's length from the Ministry of Community Safety and Correctional Services. The Commission reports to the Minister.

The Commission is responsible for ensuring that adequate and effective police services are provided throughout Ontario. Its oversight powers are an important element of the civilian governance structure set out in the *Act*. To ensure compliance with the *Act*, the Commission has the authority to investigate policing related matters, hold different types of hearings and make recommendations with regard to the delivery of police services in a community.

Police services and police services boards are ultimately accountable to the public through the Commission.

A. Appeals

The Commission hears appeals of decisions at police disciplinary hearings concerning complaints about police conduct made by members of the public or initiated by chiefs of police. The hearings are called by a chief of police and are presided over by a hearing officer who is a police officer, a former police officer, a judge or a former judge.

A public complainant (where the officer is acquitted) and a police officer each have the right to appeal to the Commission in writing within 30 days of receiving notice of the decision at a disciplinary hearing. If a public complainant wishes to appeal penalty alone, they must first obtain leave to appeal. After hearing the appeal, the Commission may:

- confirm, vary or revoke the decision of the hearing officer;
- substitute its own decision; or
- where the complaint is related to events occurring after October 19, 2009, it may also order a new hearing.

In fulfilling its appellate role, the Commission ensures that the decision of the hearing officer is based on facts established by the evidence at the hearing, and reflects the proper application of the law.

B. Investigations and Inquiries

The Commission may investigate and inquire into the administration of a municipal police service, the manner in which policing services are being provided, and the policing needs of a municipality. The Commission may be directed by the Lieutenant Governor in Council to hold an inquiry into any matter relating to crime or law enforcement. As well, the Commission may independently investigate and inquire into the conduct or work performance of police officers, chiefs of police, members of local police services boards, auxiliary members of a police service, special constables, and municipal law enforcement officers.

C. Hearings

As a quasi-judicial body, the Commission has specific authority to hold different types of first instance hearings to ensure compliance with the *Act*. The Commission:

- decides disputes between local police services boards and municipal councils about annual police budgets;
- approves the restructuring or disbandment of municipal police services where an employee termination is involved;
- determines whether or not a disabled member of a police service has been accommodated;
- adjudicates on disputes about membership in municipal police bargaining units; and
- rules on whether or not prescribed standards of police services are being met.

D. Approvals

The Commission approves the appointment of First Nations Constables to perform specified duties in designated geographical areas.

E. Public Complaints

The Commission has responsibility for overseeing public complaints about police conduct, policies and services provided by a police service where the complaints are related to events which occurred prior to October 19, 2009. The Commission continues to complete outstanding public complaint review files.

The process for dealing with such matters is as follows. Members of the public, who are not satisfied with a local police decision about their complaints, may ask the Commission to review the matter.

When conducting a review, the Commission receives the complaint file from the police service as well as submissions from the complainant. A Commission case manager will analyze the file and prepare a case summary to present to a review panel of Commission members.

The panel may:

- confirm the decision of the Chief of Police/OPP Commissioner;
- refer the matter back to the involved police service or another police service for further investigation;
- find misconduct of a less serious nature; or
- order a disciplinary hearing.

Commission: The Organization

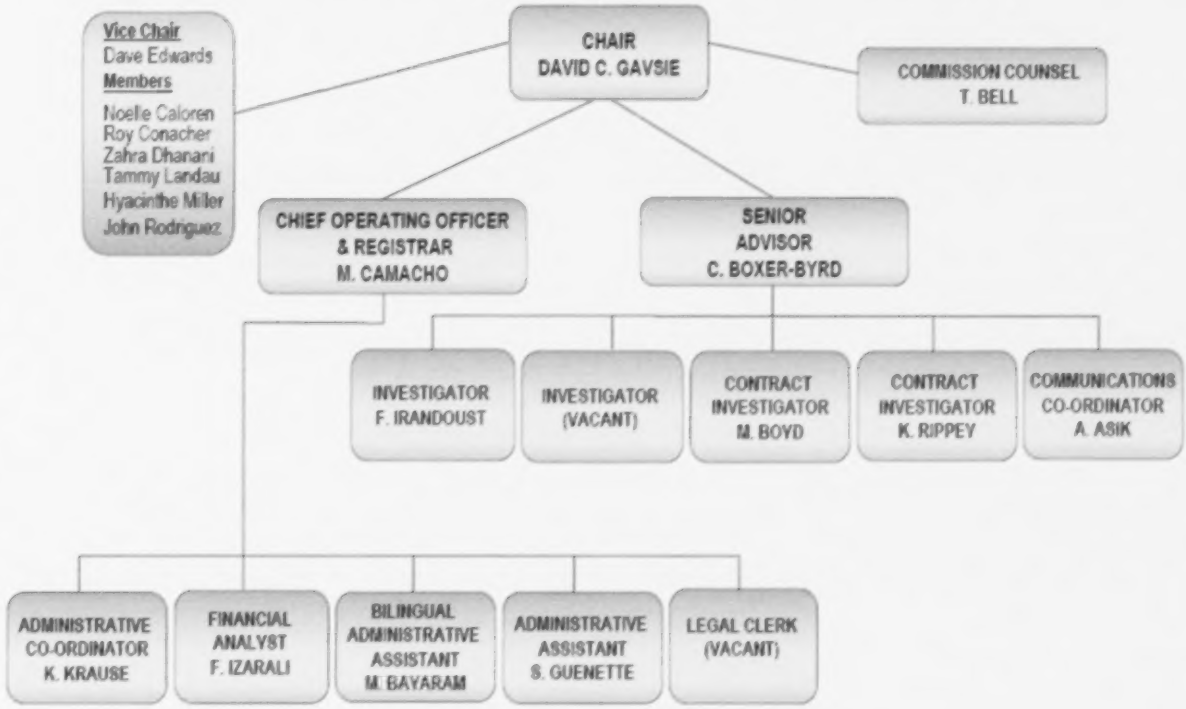
The Commission is made up of a full-time Chair, a part-time Vice-Chair and six part-time members.

Members are appointed by Order-in-Council for terms of 2, 3 and 5 years, but not to exceed 10 years in total. Members represent a diverse cross-section of professions and Ontario communities. They have extensive backgrounds in law, education, community advocacy, human rights, corrections, victims' rights, politics, and criminal and aboriginal justice. Members are supported in their role by advisory, legal, investigative, communications, and administrative Commission staff.

In addition to attending regular monthly meetings at the Commission's Toronto office, Members sit on panels to conduct appeals and first instance hearings.

Organizational Chart 2011

ONTARIO CIVILIAN POLICE COMMISSION



Members of the Commission

David C. Gavsie – Chair (Full-time)

David Gavsie practiced corporate/commercial law for more than thirty years in both Ottawa and Toronto with the law firms of Gowling and Henderson and Ogilvy Renault prior to his retirement from the practice of law. In November 2005 he was appointed Chair of the Alcohol and Gaming Commission of Ontario where he served until February 2011 when he became Chair of the Ontario Civilian Police Commission. He has been Chair of the Greater Toronto Marketing Alliance, the Ontario Chamber of Commerce, the Ottawa International Airport Authority, the Institute of Corporate Directors Corporate Governance College, and has served and continues to serve on boards and committees of a number of other corporations. He is also a director of the Canadian Association for Civilian Oversight of Law Enforcement (CACOLE) as well as a member of the selection committee for the Ontario Medal for Firefighters and Police Bravery. David enjoys playing tennis and boating (power).

Dave Edwards – Member (Part-time)

Dave Edwards has been a partner in a Niagara Region law firm since 1978 practicing primarily in the areas of corporate and commercial law. During his professional career he served on a number of community organizations and held a number of positions including: Chair of the Board of Trustees of Brock University, President of the United Way of his Municipality and District, Member of the Niagara District Airport Commission, and a Member of the Boards of Directors of The Alzheimer Society of Niagara and the Rotary Club.

Noëlle Caloren – Member (Part-time)

Noëlle Caloren is a lawyer who was called to the Ontario Bar in 1995. She practices law in a large national Canadian law firm. With a background in general litigation, Ms. Caloren has developed an expertise in employment and labour law, human rights and education law matters. Over the last six years, Ms. Caloren has taught Civil Procedure at the Bar Admission Course of the Law Society of Upper Canada. She is also a contributing author to a comprehensive employment law text *Employment Law – Solutions for the Canadian Workplace.* Ms. Caloren is fluently bilingual.

Roy B. Conacher – Member (Part-time)

Roy B. Conacher is a senior partner with an eastern Ontario law firm. He was called to the Bar in 1971 and after practicing in Toronto for several years moved to eastern Ontario. He has served on many boards and tribunals during his career including appointments as Co-Chair, Ontario Psychiatric Review Board; Regional Vice-Chair, Ontario Consent and Capacity Board; Independent Chairperson, *Federal Penitentiaries Act*; and Deputy Judge (Small Claims Court). Mr. Conacher has also served as a municipal councillor, as Chair, Professional Division, Eastern Ontario United Way Campaign, and as a director of a local Rotary Club. His practice now concentrates primarily on real estate development, municipal law and administrative law.

Zahra Dhanani – Member (Part-time)

Zahra Dhanani is a lawyer, trainer, facilitator and independent consultant to the nonprofit sector. She studied at Osgoode Hall Law School where she received her LL.B. and earned her LL.M. in Alternative Dispute Resolution. With more than 20 years experience, Ms. Dhanani has extensive knowledge in the areas of nonprofit organizational development, social justice, diversity, gender violence and immigrant and refugee realities. Ms. Dhanani has served as an expert to service providers and community organizations providing plain language legal training on multiple areas of law. Ms. Dhanani completed her undergraduate degree at the University of Ottawa where she focused her studies on Women's Issues and Political Science.

Tammy Landau – Member (Part-time)

Tammy Landau is Associate Professor in the School of Criminal Justice at Ryerson University. She has a PhD in criminology from the Centre of Criminology at the University of Toronto, and has been involved in a wide range of community projects and agencies. Dr. Landau has been a consultant to federal, provincial and local governments on a variety of justice issues. Her research interests include policing, Aboriginal justice and victimology.

Hyacinthe Miller – Member (Part-time)

Following graduation from university, Ms. Miller worked in the private sector and for the federal and provincial governments in Ontario. She has also been active in various community agencies. During her career, Ms. Miller has been a senior manager, a technology consultant and general advisor to federal and provincial government ministries and central agency officials, law enforcement agencies and civilian oversight organizations. Currently an organizational development consultant, Ms. Miller is also the former Executive Director of the Canadian Association for Civilian Oversight of Law Enforcement. She is active in various community agencies and is a published author.

John R. Rodriguez – Member (Part-time)

John Rodriguez began his extensive career as a teacher in southern Ontario, later becoming principal of a northern Ontario elementary school. He was elected president of the Ontario English Catholic Teachers' Association where he promoted greater cooperation between teachers and organized labour. In 1972, he began his 18-year service as a Member of Parliament. In 2006, he was elected mayor of a major Ontario city for four years. He has served on numerous boards including the Canadian Mental Association, the Heart and Stroke Association, the Child and Family Centre and is presently a board member of the Sudbury Symphony Orchestra. Mr. Rodriguez holds a Bachelor of Arts degree from Laurentian University majoring in English and Spanish Literature.

Commission Budget

The annual budget allocated to the Commission for the 2011 calendar year was $1,679,900.90.

The following is a breakdown of the budget:

ITEM	ALLOCATION ($000)
Salaries & Wages	1,457.70
Employee Benefits	151.90
Transportation & Communications	37.80
Services	21.30
Supplies & Equipment	9.20
Other	1.00
Total	**1,678.90**

Outreach

Each year, the Commission actively engages police officers and civilian staff of police services and police services boards in discussions about their roles in police governance and civilian oversight. The ultimate goal is to ensure understanding of the Commission's mandate.

Staff lend their time and expertise to promote general awareness of legislative requirements and specific operational responsibilities. Opportunities for open dialogue – both formal and informal – include annual conferences and zone meetings with the Ontario Association of Chiefs of Police, the Ontario Association of Police Service Boards and the Police Association of Ontario, together with meetings with the Ministry as needed.

The Commission is regularly invited to participate in ongoing education and training programs offered by the Ontario Police College and the Ontario Provincial Police Training Academy. Presentations are made to Professional Standards officers as well as senior officers and legal staff who have investigative and administrative responsibilities within the complaints and appeal processes.

Inquiries, Investigations and Fact-Finding Reviews

Section 25 of the *Act* provides that the Commission may, on its own motion or at the request of the Solicitor General, the Independent Police Review Director, a municipal council or a board, investigate, inquire into and report on:

- the conduct or the performance of duties of a police officer, a municipal chief of police, an auxiliary member of a police force, a special constable, a municipal law enforcement officer or a member of a board;
- the performance of duties of an appointing official under the *Interprovincial Policing Act, 2009*;
- the administration of a municipal police force;
- the manner in which police services are provided for a municipality; and
- the police needs of a municipality.

Initiation of a section 25 inquiry is a serious, resource-intensive process with the potential for serious consequences for the member, chiefs of police and police services board involved. The consequences can include demotion, dismissal, suspension or revocation of an appointment.

In 2011, the Commission received 10 requests to invoke its powers under section 25. It invoked its powers and conducted two section 25(1) investigations, both of which proceeded to public hearings. Other matters were investigated but did not proceed to a hearing. In some cases, the Commission declined the request to invoke its mandate.

DATE OF DECISION	SUBJECT OF INVESTIGATION	RESULT
July 28, 2011	Chief Michael Knorz of the Wawa Police Service	Matter dismissed when Chief ceased being a police officer and the Commission lost jurisdiction.
September 8, 2011	Chief Bruce Davis of the South Simcoe Police Service	Found guilty of misconduct namely neglect of duty. Penalty of 5 days, not less than 40 hours.

Section 116 Status Hearings

Municipal police forces in Ontario are composed of "members" who are appointed by local police services boards. Section 2 of the *Act* defines "members" to include both police officers and civilian employees.

The *Act* permits members to form associations for the purposes of collective bargaining. Normally, there are two associations: one for officers and civilians, and another for senior officers. Under section 115(2) of the *Act*, chiefs and deputy chiefs are excluded from this scheme.

From time to time, a dispute arises as to whether or not a particular member should be assigned to the local police association or to the senior officers association. Section 116 of the *Act* sets out a process to resolve such disagreements. It states:

> (1) If there is a dispute as to whether a person is a member of a police force or a senior officer, any affected person may apply to the Commission to hold a hearing and decide the matter.
>
> (2) The Commission's decision is final.

There were no section 116 status matters before the Commission during 2011. The full text of previous section 116 status decisions can be found on the Commission's web site at www.ocpc.ca

Section 39 Budget Hearing

Police services boards are required to submit their aggregate operating and capital estimates annually to municipal council that show, separately, the amounts that will be required to maintain the municipal police force and provide it with the equipment and facilities that it needs to operate, as well as the amount of money required to pay the expenses of the board's operation other than the remuneration of board members.

Upon a review of the aggregate estimates, it is the municipal council's responsibility to establish an overall budget for the board.

Section 39(5) of the *Act* states, "If the board is not satisfied that the budget established for it by the council is sufficient to maintain an adequate number of police officers or other employees of the police force or to provide the police force with adequate equipment or facilities, the board may request that the Commission determine the question and the Commission, shall, after a hearing, do so."

There were no section 39 budget matters before the Commission during 2011. The full text of previous section 39 budget decisions can be found on the Commission's website at www.ocpc.ca

Police Service Restructuring

Section 40 of the *Act* allows police services boards to terminate the employment of a member of a police force for the purpose of abolishing the force or reducing its size if the Commission consents and if the abolition does not contravene the *Act*.

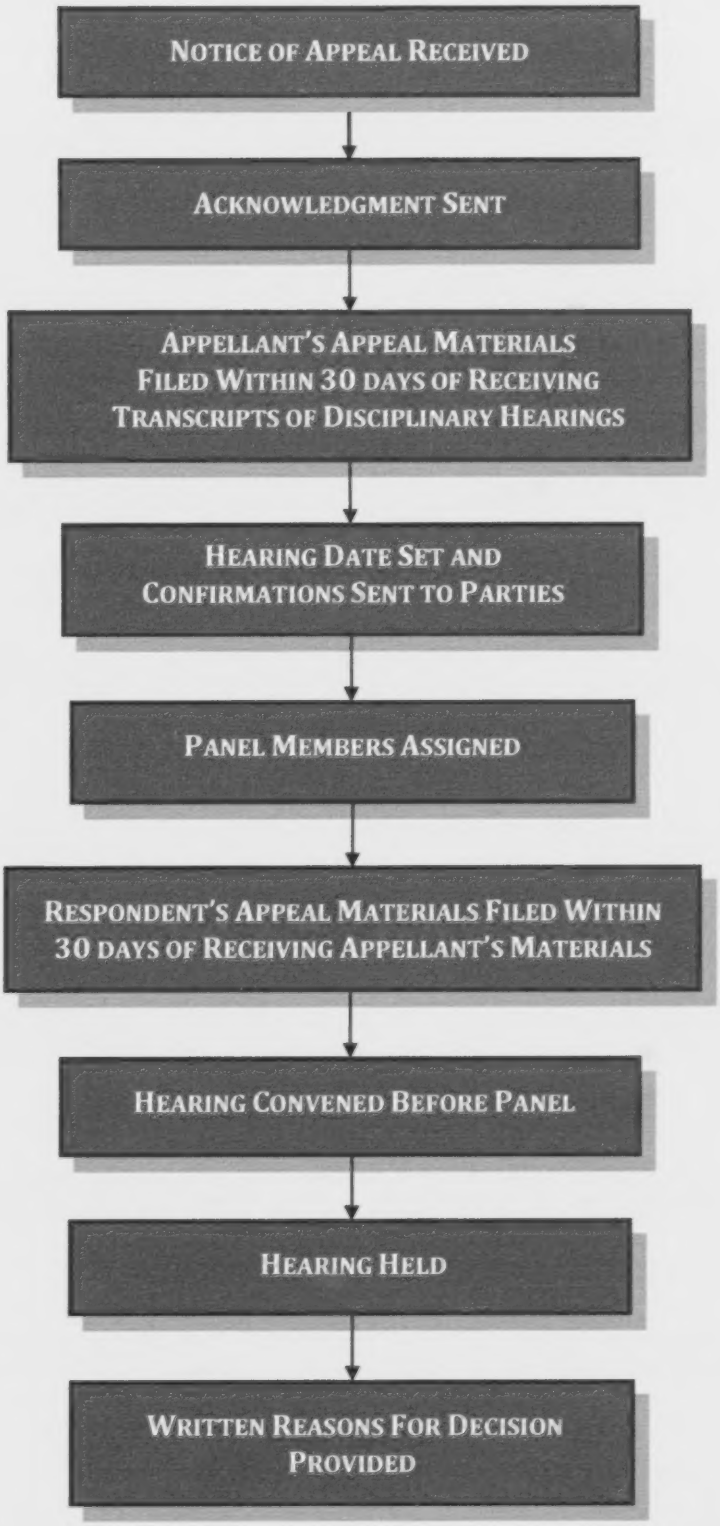
When a municipality requests the approval of the Commission for the disbandment or downsizing of their police service, they must supply the Commission with a copy of a resolution passed by municipal council. The Commission requests a copy of the proposal for the provision of alternative policing services and also ascertains whether severance arrangements have been made with those members whose employment will be terminated if the proposal is accepted.

It is not the Commission's function to judge whether or not what is being proposed is economical or superior to what may already be in place or any other alternative. The Commission's focus is to determine whether the proposed arrangements meet the requirements of the *Act*. It is not the function of the Commission to determine what constitutes appropriate severance arrangements. That is a matter for bargaining between the parties and, in the absence of agreement for arbitration under the *Act*.

A public meeting is held to hear presentations and receive submissions about the proposal to reduce or disband a municipal police service. Following the completion of the meeting, the Commission considers all of the information provided and renders a written decision.

During 2011, the Commission received one request regarding a section 40 matter but a decision was not rendered in that year. The official text of previous restructuring decisions can be found on the Commission's website at www.ocpc.ca

Disciplinary Appeals Process



Summary of Disciplinary Appeal Decisions

In previous years, the Commission included all of its decisions in the Annual Report. However, the official text of all of Commission decisions can be found on its website at www.ocpc.ca

During 2011, the Commission heard 16 disciplinary appeals, three of which included preliminary motions.

The following chart identifies the appellant, respondent, police service, date and outcome of the decision.

DATE OF DECISION	COMPLAINANT & POLICE SERVICE	RESULT
January 31, 2011	Provincial Constable Stephen Watters, Ontario Provincial Police, and Lisa Smith	Appeal partially granted and penalty varied. Revoked finding of unlawful or unnecessary exercise of authority and upheld finding of neglect of duty. Penalty revoked and substituted a forfeiture of 3 days or 24 hours.
February 16, 2011	Sergeant James Saxon, Amherstburg Police Service	Appeal dismissed
February 22, 2011	Constable Daniel Bargh, Ottawa Police Service	Appeal dismissed
April 13, 2011	Constable Harinderpal Mamak, Ottawa Police Service	Appeal dismissed
April 15, 2011	Constable Jeffrey Gulick, Ottawa Police Service	Appeal dismissed
May 20, 2011	Constable Juin Pinto, Toronto Police Service	Appeal dismissed
May 25, 2011	Provincial Constable C.S. Purbrick, Ontario Provincial Police	Appeal granted and penalty varied. Penalty of demotion imposed with terms and conditions.

DATE OF DECISION	COMPLAINANT & POLICE SERVICE	RESULT
July 9, 2011	Magabi Suleiman and Constable Jacky Lord, Ottawa Police Service	Appeal granted and Hearing Officer's decision revoked. Constable Lord found guilty of unlawful or unnecessary exercise of authority and insubordination. Penalty of forfeiture of 8 days or 64 hours pay imposed.
August 15, 2011	Constable William Barlow, Ottawa Police Service	Appeal dismissed
October 13, 2011	Provincial Constable Rolf Schmidt, Ontario Provincial Police	Appeal granted and penalty varied; substituted penalty of forfeiture of 20 hours. The forfeited hours are to be worked in addition to the Appellant's regularly scheduled work.
December 12, 2011	Constable Sean Jackson, York Regional Police Service	Appeal granted. Penalty imposed by the Hearing Officer is revoked and a penalty of forfeiture of 10 days being not less than 80 hours substituted. The order that the Appellant continue or enter any course of alcohol treatment is quashed.
December 20, 2011	Elizabeth Galazka and Constable Sean Ralph, Ottawa Police Service	Appeal granted and the Hearing Officer's decision to quash the charges is revoked. Matter returned to the Hearing Officer to continue with the hearing.

Commission Hearing Activity

In 2011, the Commission had:

- 14 hearings,
- 2 abandoned / withdrawn,
- 16 decisions released,
- 3 div court appeals / JR decisions released.

In 2010, the Commission had:

- 10 hearings,
- 2 abandoned / withdrawn,
- 11 decisions released,
- 3 div court appeals / JR decisions released.

In 2009, the Commission had:

- 12 hearings,
- 1 abandoned / withdrawn,
- 19 decisions released,
- 4 div court appeals / JR decisions released.

In 2008, the Commission had:

- 15 hearings,
- 2 abandoned / withdrawn,
- 13 decisions released,
- 7 div court appeals / JR decisions released.

In 2007, the Commission had:

- 23 hearings,
- 6 abandoned / withdrawn,
- 23 decisions released,
- 3 div court appeals / JR decisions released.

In 2006, the Commission had:

- 29 hearings,
- 5 abandoned / withdrawn,
- 19 decisions released,
- 7 div court appeals / JR decisions released.

In 2005, the Commission had:

- 9 hearings,
- 5 abandoned / withdrawn,
- 5 decisions released,
- 18 div court appeals / JR decisions released.

Summary of Statutory Appeals and Judicial Reviews

The following is a list of Commission decisions that were subject to statutory appeals, judicial reviews and applications decided in 2011. The decisions can be found at: www.canlii.org/on

PARTIES	COURT	DATE	OUTCOME
Stephen Dolan v. OCCPS, et al.	Divisional Court of Ontario	March 10, 2011	Application for judicial review dismissed.
Stephen Dolan v. OCCPS, et al.	Divisional Court of Ontario	November 22, 2011	Application for judicial review dismissed.
Sajjad Asghar v. OCCPS, et al.	Divisional Court of Ontario	October 3, 2011	Application for judicial review dismissed.

First Nations Policing

The *Constitution Act*, 1867 assigned responsibility for the administration of justice to the provinces. Constitutionally and legislatively, Ontario is responsible for the delivery of policing services in all parts of the province, including on First Nations reserves and territories.

In 1975, the Task Force on Policing led to the establishment of a tripartite arrangement for funding the Ontario First Nations Policing Agreement. The Ontario Provincial Police administer the program and provide support. There has been a gradual transfer of administrative responsibility from the OPP to First Nations governing authorities. Some of the functions, which previously had been the exclusive responsibility of the OPP, have become jointly administered; others have been assumed completely by First Nations.

Section 54(1) of the *Act* states, "*With the Commission's approval, the Commissioner may appoint a First Nations Constable to perform specific duties.*"

Section 54(2) of the *Act* states, "*If the specified duties of a First Nations Constable relate to a reserve as defined in the Indian Act (Canada), the appointment also requires the approval of the reserve's governing authority or band council.*"

First Nations Constables are responsible for enforcing provincial and federal laws and bylaws in First Nations territories.

In 2011, there were 620 First Nations Constables serving. During the year, the Commission approved 47 First Nations Constable appointments.